

DIVISION IV

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOSEPHINE LINKER HART, Judge

CACR05-1352

June 14, 2006

THOMAS LARRY DUPRIEST

APPELLANT

V.

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
[NO. CR2004-4947]

STATE OF ARKANSAS

HON. JOHN LANGSTON,
CIRCUIT JUDGE

APPELLEE

AFFIRMED

Thomas Larry DuPriest was convicted in a Pulaski County jury trial of maintaining a drug premises, and he was sentenced to seventy-two months in the Arkansas Department of Correction. On appeal, he argues that the trial court erred in denying his motion for a directed verdict because 1) the State failed to corroborate his accomplice's testimony, and 2) the evidence was insufficient to support his conviction. We affirm.

DuPriest was charged by information with six felony drug offenses arising from the discovery of a meth lab in an apartment complex on 1717 South Louisiana where DuPriest was part-owner and manager. Five Little Rock Police Department narcotics detectives, Ken Blakenship, Barry Flannery, Michael Terry, Chris Littleton, and Steve Pledger, testified at DuPriest's trial. All five stated that on October 4, 2004, they were dispatched to the building to investigate a complaint of a "strong chemical smell," and all except Detective Steve Pledger stated that they had direct contact with DuPriest when he was summoned to assist them in their investigation. Their testimony consistently

described DuPriest as being very helpful in their efforts to track down the source of the chemical smell, including his offer to open the apartment that was occupied by the State's star witness, Mark Brookings. Brookings lived in apartment 22, which was across the hall from apartment 25 where the meth lab was discovered.

After the detectives declined to enter apartment 22 without a warrant, they inquired about apartment 25 and DuPriest responded that the apartment was vacant and was only used for storage. When the detectives asked DuPriest to open the door to apartment 25, his "demeanor" changed. They claimed that DuPriest became visibly nervous, and he told the officers that none of the keys that he had in his possession would open the door to that apartment. DuPriest then went downstairs to his vehicle to obtain another set of keys, with which he also was apparently unable to open the locks on the door. Entry was finally obtained when the officers noted an open window to apartment 25, and Detective Littleton used it to enter the apartment with DuPriest's permission. In the apartment, the police discovered what appeared to be an active meth lab along with a considerable quantity of precursor chemicals. Subsequently, Detective Blakenship retrieved both sets of keys from DuPriest and determined that DuPriest possessed keys that would have opened the locks on the door to apartment 25.

Brookings testified that he had known DuPriest for more than twenty years. Brookings admitted that he had "a problem with crystal meth." He claimed that when he moved into an apartment on 1717 South Louisiana Street, he had regular contact with DuPriest, and during that time, he assisted DuPriest in manufacturing methamphetamine. Further, he testified that he helped DuPriest move the meth lab into apartment 25. He claimed that between April 21, 2004, and October 4, 2004, he was present in apartment 25 between ten and twenty times, and he observed DuPriest make and use

methamphetamine there. Brookings claimed that when he lived in apartment 22, he “basically had a key to No. 25,” and that he obtained the key from DuPriest.

Brookings admitted that he had been stopped by North Little Rock police on April 21, 2004, and he was found to be in possession of pseudoephedrine. He pleaded guilty to possession of pseudoephedrine with intent to manufacture, and he received probation. He denied that the State “made me any promises in exchange for my testimony”; however, he admitted that he was not charged with other drug-manufacturing offenses and that he knew the police expected “cooperation” from him when they released him after his traffic stop.

The State also presented testimony from Arkansas State Crime Lab fingerprint expert Kenneth King, who stated that he was not able to match the prints found inside apartment 25 to DuPriest. It concluded its case-in-chief with testimony from Arkansas State Crime Lab forensic chemist Norman Kemper, who essentially confirmed that the material seized in apartment 25 was associated with the manufacture of methamphetamine.

DuPriest moved for a directed verdict, arguing that Brookings’s testimony concerning DuPriest’s connection with apartment 25 was uncorroborated and that the argument “would apply to all counts.” He also argued specifically in regard to the pending possession of ephedrine charge that the State failed to prove the weight of the ephedrine, which the State conceded. The trial court denied the directed-verdict motion as to the remaining five counts. DuPriest properly renewed his motion after he presented his case.

DuPriest argues that the trial court erred in denying his motion for a directed verdict because the State failed to adequately corroborate Mark Brookings’s accomplice

testimony. He contends that the State presented no evidence to “directly connect” him with the commission of the offense. He further asserts that evidence of his demeanor and “whether or not he had the keys to the apartment” merely raised “a suspicion of guilt,” and failed to provide sufficient corroboration of Brookings’s testimony. Further, he argues that the evidence was insufficient to sustain a conviction because “the jury absolutely had to speculate as to who had knowledge of the methamphetamine lab where the evidence so overwhelmingly pointed to the accomplice as its local operator.” In support of his argument, he directs our attention to the testimony of witnesses from his case-in-chief and asserts that they proved that Brookings was responsible for the meth lab. We are not persuaded by these arguments.

A motion for a directed verdict is a challenge to the sufficiency of the evidence. *Peterson v. State*, 81 Ark. App. 226, 100 S.W.3d 66 (2003). The test for determining the sufficiency of the evidence is whether the verdict is supported by substantial evidence, direct or circumstantial. *Id.* Substantial evidence is evidence forceful enough to compel a conclusion one way or the other beyond suspicion or conjecture. *Id.* When the defendant challenges the sufficiency of the evidence convicting him, the evidence is viewed in the light most favorable to the State. *Id.* The jury is the sole judge of the credibility of the witnesses and the weight to be given their testimony. *Burns v. State*, 323 Ark. 206, 913 S.W.2d 789 (1996).

It is well established that testimony of accomplices must be corroborated, but evidence corroborating accomplice testimony need not be sufficient standing alone to sustain the conviction. *Tate v. State*, 357 Ark. 369, 167 S.W.3d 655 (2004). However, it must tend to connect the defendant to a substantial degree with the commission of the crime independent of the accomplice’s testimony. *Id.*; Ark. Code Ann. § 16-89-111(e)(1)

(Repl. 1999). The corroborating evidence may be circumstantial so long as it is substantial. *Tate, supra*. Where circumstantial evidence is used to support accomplice testimony, all facts in evidence can be considered to constitute a chain sufficient to present a question for resolution by the jury as to the adequacy of the corroboration. *Id.*

In pertinent part, the offense of maintaining a drug premises is codified as follows:

“It is unlawful for any person . . . [t]o knowingly keep or maintain any store, shop, warehouse, dwelling, building, or other structure or place or premise, that is resorted to by a person for the purpose of using or obtaining these substances or that is used for keeping them in violation of chapter.” Ark. Code Ann. § 5-64-402(a)(2) (Repl. 1997).

The State presented evidence that DuPriest was part-owner and manager of the apartment building in question. It was established through the testimony of four Little Rock narcotics detectives that on the day they discovered the meth lab, DuPriest had in his possession the keys to apartment 25. Rather than opening the door, DuPriest attempted to mislead the police into believing that he did not have keys to the apartment. We can conceive of no reason why, consistent with his innocence, DuPriest would attempt to conceal his ability to access apartment 25. Furthermore, there was consistent testimony from the narcotics detectives that DuPriest’s “demeanor” noticeably changed when he was unsuccessful in attempting to lead the officers to Brookings’s apartment and was instead asked to let them into apartment 25. This change in demeanor is evidence that DuPriest had knowledge of what the police would find if they opened the door. DuPriest does not dispute that apartment 25 was a drug premises. Accordingly, we conclude that the State presented sufficient circumstantial evidence to connect DuPriest to a drug premises.

Regarding the second part of DuPriest's argument addressing the sufficiency of the evidence, we note that it differs materially from the argument that was presented to the trial court. It is well settled that parties are bound by the scope and nature of the objections and arguments made at trial. *Tester v. State*, 342 Ark. 549, 30 S.W.3d 99 (2000). Where an appellant argues on appeal grounds for a directed verdict in addition to the grounds he raised below, the appellate court limits its review to those grounds that were presented to the trial court. *Ayers v. State*, 334 Ark. 258, 975 S.W.2d 88 (1998). Accordingly, we decline to address the balance of DuPriest's argument.

Affirmed.

PITTMAN, C.J., and GRIFFEN, J., agree.